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Answer...to the Charge...  
by Sir Elijah Impey

By  
Philip Francis

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A N S W E R

O F

PHILIP FRANCIS, Esq.

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*Francis.*  
*1799.*

A N S W E R

O F

PHILIP FRANCIS, Esq.

TO THE

C H A R G E

BROUGHT AGAINST

SIR JOHN CLAVERING,  
COLONEL GEORGE MONSON,  
AND MR. FRANCIS,

AT THE

BAR OF THE HOUSE OF COMMONS,

ON THE

FOURTH OF FEBRUARY, 1788;

BY

SIR ELIJAH IMPEY, KNIGHT.

---

L O N D O N :

PRINTED BY J. JARVIS, WILD-COURT, LINCOLN'S-INN-  
FIELDS.

MDCCLXXXVIII.

A N S W E R

OF

PHILIP FRANKS, ESQ.

TO THE

C H A R G E

BRONCHITIS

SIR JOHN CLAYBURN

COLONEL GEORGE MONROE

AND MR. FRANCIS

AT THE

BAR OF THE HOUSE OF COMMONS

ON THE

FOURTH OF FEBRUARY, 1771

BY

SIR WILLIAM MURRAY, KNT.

L O N D O N

PRINTED BY J. BARNARD, ST. JOHN'S LANE

1771

ROBERT BARNARD

PRINTED BY J. BARNARD, ST. JOHN'S LANE

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# HOUSE OF COMMONS,

*Wednesday, February 27, 1788.*

“ The House (according to Order) re-  
“ solved itself into a Committee of the  
“ whole House, to consider further of  
“ the several Articles of Charge of  
“ High Crimes and Misdemeanors  
“ against Sir *Elijah Impey*, Knight, late  
“ Chief Justice of the Supreme Court  
“ of Judicature at Fort William, in  
“ Bengal. *Right Honourable William*  
“ *Windham, Esq. in the Chair.*

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*Zamboni*

MR. FRANCIS. I flattered myself, Sir, that when the House thought proper to exclude me from the Committee of Managers appointed to conduct the impeachment of Mr. Hastings, whether that resolution was meant to be a discharge from a service, or a relief

B

from



from a duty, it would have this effect at all events—that, from thenceforward, I should be suffered to remain in a state of neutrality; and that, as I was deprived of the honour, I should be exempted from the cares and censures, to which the Managers of an Impeachment must unavoidably submit. But much more had I reason to expect that, after the public declaration which I made in Parliament two years ago\*, *that I would never sit in judgement on Sir Elijah Impey; and that I would never give a judicial vote in any cause, in which he might be a party, unless I could safely give it for him;—*having publicly avowed that declaration in print, having since repeatedly declared to my friends, particularly to the honourable Baronet † near me, that I would take no part in the prosecution of Sir Elijah Impey, and having strictly adhered to the spirit of these declarations, I should not be implicated, in any shape, in the impeachment of that gentleman. Least of all did I expect, that I should be accused by him of having borne testimony to his good conduct, and compelled by him to answer, as a criminal,

\* On the seventh of March, 1786.

† Sir Gilbert Elliot.

for declarations, which he tells you I have heretofore made in his favour. I do not mean to deny his right of mixing accusation with defence, if to criminate others be in any degree material, or even useful to his own exculpation. In some cases undoubtedly, the weapons of attack are the best, perhaps the only instruments of defence. Whether the use he has made of these weapons, and the manner, in which he has availed himself of his undisputed right on this occasion, be perfectly prudent or not, can only be determined by the event. All I contend for is, that *I*, in my turn, may be allowed the same latitude which *he* has taken, and which *I* allow him. It is not my direct object this day to criminate him, or any man; but it *may* be necessary to my defence. It may be unavoidable. Defence and accusation, in this particular case, may be inseparable. If that should happen, I desire it may be remembered, that, besides the general right of attack which, for myself, I admit to belong to him and to every defendant, I appeal to the specific use, which he has made of it, and follow the precedent, which he has himself specifically set me.

On some late occasions, my situation, in this House, has been equally painful and invidious.

I have been repeatedly marked as the personal object of debate,—the middle passive subject between the action and reaction of the powers of the House, between the hammer and the anvil. If any man thinks there is any thing delightful or agreeable in such a distinction, I am sure his opinion is not founded on experience. I stand here, now, defendant against Sir Elijah Impey. In that character at least, I hope to be heard with patience and a liberal construction. I desire no more.

The charge produced by this gentleman against Sir John Clavering, Colonel Monson, and myself, as I understood it, and as precisely as I have been able to collect it from my notes and memory, was, in real amount and substance, to this effect. It is his own fault if I do not state it correctly.

“ That whereas we had, by sundry declarations and minutes, both before and after the event, expressed, or strongly intimated our opinion, that the prosecution, trial, and execution of Nundcomar, were founded on political motives, and pursued for the sole purpose of saving Mr. Hastings from the effect of that man’s evidence; no credit  
 3 “ ought

“ ought to be given to the same, because we  
 “ had, in a few days after the execution, or-  
 “ dered a paper, purporting to be a petition  
 “ from Nundcomar against the Judges, to  
 “ be burnt, the entries of it to be expun-  
 “ ged, and the translations to be destroyed;  
 “ and, because I had, on that occasion, decla-  
 “ red, that I considered the insinuations con-  
 “ tained in it as wholly unsupported, and of a  
 “ libellous nature, and that to send a copy of  
 “ it to the Judges, would be giving it much  
 “ more weight than it deserved.”

If this be the charge, I admit the premises,  
 and I deny the conclusion. If it be *not* the  
 charge, I shall pause for a moment, and wait  
 to be informed, *What is it?*—No man, I think,  
 will say, that I have weakened or understated  
 it. For myself, I declare that I am not able  
 to conceive, how it can be expressed in strong-  
 er terms against the parties accused. If ne-  
 vertheless it should be contended, that the  
 terms I have made use of are loose or defec-  
 tive, or that I have not done perfect justice to  
 Sir Elijah Impey’s meaning and intention, let  
 it be remembered, Sir, that he has not deli-  
 vered his accusation in writing, as I had a  
 strict unquestionable right to expect. No-  
 thing

thing that may be urged to justify his withholding the remainder of his defence, can be applied to that part of it, in which others are accused. It might be very prudent in him ; it might be essential to his safety, not to put his accusers in possession of his defence. Be it so. In that respect, he is at liberty to act as he thinks proper ; though I believe his refusal to produce his defence, in the only form in which it could be fairly canvassed, or even compared with the written accusation, will not be received as a strong presumptive proof even of his own confidence in the merits of his cause. My demand is a demand of right. It is not to oblige him to produce his defence, but to produce his accusation. Before I proceed, Sir, to the refutation of the charge, as I have stated it, the exactness of which, I perceive, is not disputed, I must call the attention of the Committee to two preliminary considerations, and request that gentlemen will carry them in their minds during the subsequent discussion. They will throw a light on the general question, and, I believe, be found very material to a thorough understanding of the whole transaction. I mean simply to state them now, and to reserve the application of them for another



another part of my defence.—The first relates to the manner, in which the paper in question, came into Sir Elijah Impey's hands; the difficulties, which were to be surmounted before he could be in possession of it; and the probable truth or falsehood of his assertion, that he never knew what the charges were, which Nundcomar had produced against Mr. Hastings. I shall recapitulate the facts to you briefly as they appear on the records, or as they have been stated by Sir Elijah Impey.

The Rajah Nundcomar was executed on the 5th of August, 1775. On the 14th, General Clavering brought the petition, which was afterwards burnt, before the Governor General and Council, in their secret department. It was produced and read; but I conclude, that the translation, which the General brought with him, was not relied on, because I find the next secret consultation, of the 16th, begins with the following words\* :—" The Persian  
 " translator sends in a *corrected* translation of the  
 " petition of the late Maha Raja Nundcomar,  
 " delivered in by General Clavering."—Mr. Hastings immediately moved that, " as this

\* Vide Bengal Appendix page, 585.

“ petition contained expressions reflecting  
 “ upon the characters of the chief Justice and  
 “ Judges of the Supreme Court, a copy of it  
 “ might be sent them.” I objected to that  
 proposal, and moved, that orders should be  
 given to the Sheriff, to cause the original to be  
 burned publicly by the hands of the common  
 hangman;—a singular step, Sir, and on the  
 face of our proceedings utterly unaccountable.  
 Mr. Hastings repeatedly said, that he did not  
 object to that motion; but he observed that it  
 would not be effectual, “ as the petition stood  
 “ on our own records, through which it  
 “ would find its way to the Court of Direc-  
 “ tors, to his Majesty’s Ministers, and in all  
 “ probability become public to the whole peo-  
 “ ple of Britain.” Admitting the force of the  
 observation, I proposed that *the entry of the  
 address from Rajah Nundcomar should be expunged.*  
 On this motion, the *unanimous* resolution of the  
 board stands in the following words—AGREED,  
 ✓ *that it be expunged accordingly; and that the trans-*  
*lations be destroyed.* To this resolution Mr.  
 Hastings was a party, not only as a Member of  
 the Council, legally bound and concluded by  
 the sense of the majority, but by his own ex-  
 press consent and agreement.

On

On the 28th of August the Judges wrote to us in the following words \* :

“ A paper, containing a false, scandalous,  
 “ and malicious charge against the Judges of  
 “ the Supreme Court, produced at your  
 “ Board, having been by you declared a libel,  
 “ and ordered to be burnt by the hands of the  
 “ common hangman, we return you our  
 “ thanks for having shewn so due a sense of  
 “ this outrage to public justice ; but, as we  
 “ must be interested as well in the Minutes  
 “ introducing and condemning the paper, as  
 “ in the paper itself, we find ourselves obliged  
 “ to desire that you will furnish us with a co-  
 “ py of the libel, and of such Minutes, which  
 “ relate to it, as stand on your consultations,  
 “ and must therefore be conveyed to England,  
 “ that we may judge whether they contain any  
 “ matters NECESSARY FOR US TO TAKE NO-  
 “ TICE OF.”

In our reply, dated 11th September, we said †,  
 “ We shall be much obliged to you, if you  
 “ will be pleased to acquaint us, from whom  
 “ you received the imperfect information

\* Page 586.

† Page 589.

“ which appears to have been conveyed to  
 “ you, on this and other occasions, of the  
 “ proceedings of this Board in our secret de-  
 “ partment; such communications cannot re-  
 “ gularly be made to you but by the authority  
 “ of the Board; nor can they be obtained  
 “ without a breach of trust in some of our  
 “ officers, which we are persuaded you would  
 “ not encourage.

“ We do not think ourselves at liberty to  
 “ communicate to you the Minutes, which  
 “ may have passed on the present subject, as  
 “ such Minutes are drawn up solely for the  
 “ information of our superiors. With respect  
 “ to the libel, it is not possible for us to fur-  
 “ nish you with a copy of that paper, having  
 “ ordered the original and translations to be  
 “ destroyed, *and no copy to be kept of either.*”—

This letter, you will observe, was signed by  
 Mr. Hastings, who knew that he, alone, had  
 given the information,—who had agreed to  
 the resolution of the Board, that the original  
 paper and translations should be destroyed, and  
 that no copy should be kept of either;—who  
 nevertheless kept a copy of the translation,  
 (which he must have obtained from the Persian  
 translator, by a breach of duty in that officer) who

knew

knew that he had given, or intended to give a copy of that translation to Sir Elijah Impey; and who not only did so, but, as it now appears, altered the translation, made by the proper officer of government, in many places, with his own hand; and it is by this last extraordinary circumstance that Sir Elijah Impey proves the authenticity of the paper, which he produces in his defence, namely, that it is altered, corrected, and interlined in Mr. Hastings's hand-writing. Mr. Hastings, I know, did not agree to the letter, though he signed it; his dissent is recorded in the following words:

“ I disapprove of the draught, because I  
 “ do not think the information imperfect,  
 “ which was received by the Judges; because  
 “ it appears to me an inconsistency to speak of  
 “ a paper, which was expunged from the re-  
 “ cords, and ordered to be publicly burnt by  
 “ the common hangman, as a secret of state,  
 “ which it was a breach of trust to divulge;  
 “ and because the letter is written *in a strain of*  
 “ *insinuation*, equally unbecoming the dignity  
 “ of the Board, and deficient in the respect,  
 “ which is due to the Judges of the Court, to  
 “ whom it is addressed.”



This dissent, you see, is supported by every argument he could think of, except the true one. He does not tell us, that he himself had given the information; that he himself had kept a copy of the translation; that he himself had corrected, and given it to Sir Elijah Impey. Had he assigned the true reason for his dissent, we must have given a very different answer to the Judges. It would have been impossible even for *us* to sign such a letter as that, which we all signed; much less could we have desired, or expected Mr. Hastings to put his name to it. It may be said perhaps, that he was bound by a provision in the Act of Parliament, and by the forms of the Council, to sign a letter resolved on by the majority, even against his opinion. That he was legally so bound and concluded, I admit; but that in fact he submitted to the law, I deny. On other occasions it appears that he did not hold himself bound, by any obligation whatever, legal or formal, to sign a letter, of which he disapproved\*.

The

\* On the 16th of the preceding June, 1775, the majority resolved on a letter to the Judges, to which Mr. Hastings did not agree. Did he sign it with a dissent?

No—

The studied terms of evasion, in which Sir Elijah Impey declined answering our requisition, deserve your attention, but they require no comment. He says\*, “ Our letter mentions no information we had received from your Board ; we cannot see what reason you have to suppose we have received any. We shall, at all times, be ready to give you any information and assistance in our power, in forwarding the public business, but must decline making a precedent of submitting to answer questions, which we think not intended for the benefit of the service, and which you have neither grounds nor right to put to us.”

(Signed)

“ E. IMPEY,

“ JOHN HYDE.”

No—the records says, [page 575] “ The Governor General, and Mr. Barwell, disapproving of this reply, decline affixing their names to it, for which they will assign their reasons in a Minute.” On the 20th of June they refused to sign another letter to the Judges, which was accordingly sent without their signature ; and Mr. Hastings said he thought himself justified in that refusal, *both by the letter of the law, and the spirit of the Company's orders.* [page 607]

\* Page 590.

Sir

Sir Elijah Impey tells you, on another occasion, and to serve another material purpose, that he knew nothing of the contents of the charges of Nundcomar against Mr. Hastings. His words, as I wrote them down upon the instant, were; “ I aver, that I did not know  
 “ what they were. How should I? They  
 “ were produced before a secret Council, and  
 “ examined by a secret Committee, of which  
 “ all the members, their clerks and secretaries, were *sworn to secrecy*.”—Now, Sir, admitting it to be possible, that Sir Elijah Impey might not know, from public report, the specific sums stated, or the particular facts and circumstances charged by Nundcomar against Mr. Hastings, that admission will not avail him. You are called upon to believe, that Sir Elijah Impey, living in the closest connection and intimacy with Mr. Hastings, did not know what was known to every man in Calcutta; what was the universal subject of conversation there for many months together, namely, that Nundcomar had accused Mr. Hastings of venality and corruption in his office. He did not know that this charge was laid before the Council on the 11th of March; that Nundcomar had been examined before the Council;  
 that

that, on the 20th of April, Nundcomar was summoned to appear before all the Judges, to answer to a charge of a conspiracy against Mr. Hastings; and that, having been acquitted and dismissed on that examination, he was, on the 6th of May, arrested, and committed to the common jail, by a warrant signed by two of the Judges, upon a charge of forgery. The facts at least were too public and too notorious not to be known to him. But we are to believe that, knowing such facts, it never once occurred to him, that there could be any relation between the first and all that followed it. Being ignorant, as he assures you, of the particulars of the charge against Mr. Hastings, he never once suspected that that act of Nundcomar could have been the motive of those subsequent measures, which were taken to destroy him. Any other man, I think, would have combined the circumstances. In any other human mind, they must have excited some degree of suspicion. My Honourable Friend, I doubt not, will be able to satisfy this House, in proper time, that the general fact, namely, that Nundcomar had brought a criminal charge against Mr. Hastings, and even the special nature of that charge, were judicially

judicially known to Sir Elijah Impey long before the execution. What I contend for, and insist upon now, is, that it is a thing utterly incredible; that it is a belief, to which no human credulity can extend, that Mr. Hastings, who, in the face of the most sacred obligation and engagement, thought himself at liberty to communicate to Sir Elijah Impey the petition of Nundcomar, to give him a corrected translation of it, and to furnish him, as I shall prove he did, with copies of our Minutes, directly arraiguing the conduct of Sir Elijah Impey in the trial and execution of Nundcomar, should not have imparted to him the charges preferred against himself by Nundcomar, which, though entered in the secret department, were neither of a secret nature in themselves, nor in fact a secret to any man in Calcutta.

The second preliminary observation, which I wish to impress on the minds of the Committee, regards the distinction, which Sir Elijah Impey carefully makes, and strenuously insists on, between the paper itself, and our *Minutes*, upon the subject;—the first he saw; the second he never saw, till very lately, when he obtained a copy of them from the India House.

It



It is indeed not only material, but essential to his defence, that he should persuade you of the truth of this last assertion. He well knew, though you are not aware of it, that, if he admitted that he had seen our Minutes of the 16th of August 1775, at any time before January 1776, he must have convicted himself of the grossest falsehood and contradiction. I shall speak to that point presently. But it seems that he not only did not see them in the year 1775, but that he never saw them at all, *till very lately*. Now, Sir, I beg leave in the first place to observe, that the Minutes in question, on the present production of which he professes to place so much reliance, have not been concealed from the world; have not been buried in obscurity. The books, now before me, (called the Bengal Narrative and Appendix) must have been printed by the Court of Directors in the year 1776, or 1777; I presume so, because I had a copy of them, long before I left Bengal, in the course of the year 1778, if not sooner. There were other copies in Calcutta. They were read with avidity by every man in the settlement, who could procure a sight of them. They contain not only our Minutes, but great

part of our proceedings, and all our correspondence with Sir Elijah Impey, on the subject of Nundcomar. To all other men, the contents must have been an object of curiosity at least. I know they were so. To *him*, in particular, they were in the highest degree interesting and important. Yet the learned gentleman never saw them in Bengal ; these books it seems, *never* fell into his hands ! nay, you are to believe that, among the number of persons, by whom they were unquestionably perused, he had no acquaintance, who might have told him that such a compilation, published by authority, and in which his name and conduct were so often mentioned, existed in Calcutta. He had no friend or well-wisher, among that number, who might have waited on him, as soon as he had read our Minutes, to congratulate him on the testimony given, as you are told, by his enemies or opponents, in favour of his integrity, and to recommend those passages at least to his immediate perusal. Believe it if you will ; believe it if you can. Perhaps you may think that, having gone so far, you have done enough, and that Sir Elijah Impey has no farther demand on your credulity. That learned gentleman

man is not so easily satisfied. It seems, Sir, he knew the facts ; he knew that we had ordered a libel on the Supreme Court of Judicature to be burned, and that it was burned ; he had seen the paper itself, and was in possession of a copy of it, given him by Mr. Hastings ; but he had never, *never* seen the Minutes that related to it ! Now, Sir, it is of itself an extraordinary circumstance, that Mr. Hastings, who thought himself at liberty to give him the paper, in violation, as I think, of the laws of the Council, and of his own personal agreement, should not have communicated to him those Minutes, which make an essential part of the transaction, and which, if they were then supposed to mean what he tells you they so clearly express, were not only innocent of all offence to the Judges, but conveyed a positive approbation of their conduct. Why should Mr. Hastings make so partial a communication of our proceedings to Sir Elijah Impey ?—Why should the Governor General withhold from the Chief Justice the fair and reasonable satisfaction of knowing that we, his enemies, had borne testimony to the rectitude of his conduct, and vindicated his character from every aspersion, which might have

been, or could be thrown upon it. I defy any man to state a principle of action that will justify Mr. Hastings in doing the first, and not doing the second ; or a rational motive of any kind, to make it probable in fact, that he did the one and not the other. The assertion is, that Mr. Hastings did not communicate our Minutes on this occasion to Sir Elijah Impey. Why not ?—perhaps he thought it unfair ;—perhaps he thought it would have been a breach of trust and honour to his colleagues.—Perhaps he made a distinction between the paper itself, which, as he says, *having been ordered to be publicly burnt, could be no secret of state\**, and the Minutes of the Council, given in secret debate and recorded for the sole information of the Court of Directors.—In general, there might have been something, though in this case there would have been nothing in the distinction ;—but in fact, did he make the distinction ? I appeal to Sir Elijah Impey, and shall leave it to him to answer the question. In his letter of the 20th of January 1776, in four or five months after the transaction of which we are speaking, he tells the Secretary of State, “ The Governor General has, within

\* Page 589.

“ these few days, communicated to me several  
 “ Minutes, signed by General Clavering, Colo-  
 “ nel Monson, and Mr. Francis ; they are seve-  
 “ rally fraught with direct charges, or plain  
 “ insinuations against the characters of the  
 “ Judges, and the conduct of the Court of  
 “ Judicature. Some seem more particularly  
 “ levelled at *me*.” You have it then from un-  
 questionable authority, that Mr. Hastings did  
 communicate our Minutes to Sir Elijah Impey :  
 —Minutes fraught with direct charges against  
 him :—Minutes, which, as he, *Impey*, says,  
*were intended to be kept secret ; but the Governor*  
*General had at last thought, that they ought in jus-*  
*tice to be communicated to him.*—Did he so ? Then  
 where was the justice of Mr. Hastings, when  
 he communicated to his learned friend those  
 secret Minutes of ours, which were fraught  
 with charges against him, and did not commu-  
 nicate to him those other Minutes, in which,  
 as this learned gentleman tells you, we had ex-  
 pressed a direct, unequivocal approbation of  
 his conduct ? was it a fair and honourable pro-  
 ceeding to his colleagues ? would it have been  
 common justice even to his enemies, to impart  
 the one, and not the other, to the person, who  
 was the subject of both ; to impart to Sir Elijah  
 Impey

Impey every thing that was likely to inflame him against us, and to withhold from his knowledge what might have operated in his mind, as an antidote against that poison ; namely, the strong declarations which we are stated to have made in his favour ? was it just to Sir E. I. to discover to him the charges, which we had written home against him, and not to furnish him with that clear, complete, and irresistible answer, which had escaped or been extorted from us, by which the charges might not only have been refuted, but must have been annihilated ; I mean the direct testimony and confession of his accusers ? For my part, Sir, I acquit Mr. Hastings of acting so unjustly to all parties ; to his friend, as well as to his foes. I acquit him of it, because I am not able to conceive a reason, good or bad, why he should act in a manner at once so unfair to his colleagues, and so injurious to his friend. I have no doubt that he communicated *all* our Minutes to Sir Elijah Impey. In proper time, I shall shew you, for what reason the contrary is maintained by this learned gentleman. On this part of the subject, I shall trouble you with only one observation more.—The Judges, in their letter of the 28th of August



gust 1775, transmitted to us certain petitions\*, which had been addressed to them, in order that they might stand recorded † on our consultations; “ which,” they say, “ we think peculiarly proper at this time; as, by promulgating the universal sense of this settlement, in relation to our conduct, they are a direct and public refutation of the libel, and corroborate *such* of your Minutes, as tend to vindicate our reputations.”—Now, Sir, if he had not seen our secret consultations of the 16th of August, how came he to know, that those or any other Minutes existed? How could he make the distinction between such as did and such as did not tend to vindicate his reputation? Mine was the only Minute of the three, to which, by any possible construction, that tendency could be imputed. Is it not evident from this passage alone, that he had a copy of the consultation before him; or, what

\* Sir Elijah Impey has lived to alter his opinion of Petitions. In his letter to Lord Weymouth, of the 2nd of March, 1780, he says, “ the only manner, in which the obtaining Petitions here differs from the modes practised by factions in England, is—there they are solicited, and got by influence—here they are commanded.”

• Page 586.

is in effect the same, that the substance of our different Minutes had been distinctly stated to him.—From all the premises, taken together, I draw this immediate inference of fact which, as I conceive, it is impossible for the human mind to resist, and which, for other reasons, I know to be true, namely that, while he pretended *to be scrupulously neuter in the disputes, which agitated the Council*, he was secretly leagued in early connexion, in close communication, in deep alliance and confederacy with Mr. Hastings. In what sense that fact is material to my defence, and in what manner I mean to apply it, will soon appear.

I must now request the Committee to observe, that there are two parties concerned in the accusation brought against us by Sir Elijah Impey;—one, the then majority of the Council collectively, viz. General Clavering, Colonel Monson, and myself;—the other, Sir John Clavering alone. Our causes are distinct, and must be separately considered and defended. With respect to the former of these parties, I have already stated to you the recorded facts of the transaction, in the order in which they happened. I am now to state the reasons of our

our conduct; I mean, not only our avowed, but our reserved reasons for acting as we did.

In reply to the Governor's motion, I said \* that " I thought our sending a copy of the " Raja Nundcomar's address to our Board, to " the Chief Justice and the Judges, would be " giving it much more weight than it deserv- " ed; and that I considered the insinuations, " contained in it, against them, as wholly un- " supported, and of a libellous nature." In the whole of that opinion Colonel Monson agreed; but he added, " that if the Board should com- " municate the paper to the Judges, he thought " *they* (the Members of the Board) might be " liable to a prosecution for a libel." General Clavering disapproved of the proposition, " be- " cause he thought it might make the Mem- " bers of the Board, who sent it, liable to a " prosecution." The Governor-General and Council having unanimously agreed that the Persian paper should be publicly destroyed, I concluded the debate with another motion, in the following words\*:—" By the same channel " through which the Court of Directors, and " his Majesty's Ministers, and the nation, " might be informed of the contents of the pa-

\* Page 585.

† Page 586.

“ per in question, they must also be informed  
 “ of the reception it had met with, and the  
 “ sentence passed upon it at this Board. I  
 “ therefore hope that its being destroyed in the  
 “ manner proposed, will be sufficient to clear  
 “ the character of the Judges, *so far as they ap-*  
 “ *pear to be attacked in that paper;* and to pre-  
 “ vent any possibility of the imputations, indi-  
 “ rectly thrown on the Judges, from extend-  
 “ ing beyond this Board, I move that the en-  
 “ try of the address from Rajah Nundcomar,  
 “ entered on our proceedings of Monday last,  
 “ be expunged.”

Before I offer any observation on the true  
 intent and meaning of these Minutes, allow me  
 to read to you a few short passages out of  
 other Minutes of ours, written both before and  
 after the execution of Nundcomar, in which  
 our opinion of the real principle and purpose  
 of that proceeding is very strongly and very  
 explicitly declared.

“ *Minute of Mr. FRANCIS.*

*April 24, 1775\*.*

“ I beg leave to observe, that a prosecution  
 “ for a conspiracy is now instituted, or is in-

\* Page 550.

“ tended

“ tended to be instituted, against Maha Rajah  
 “ Nundcomar and others, the tendency of  
 “ which seems to me to be to prevent or deter  
 “ him from proceeding in making good those  
 “ discoveries, which he has laid before the  
 “ Board. I cannot but think that the East  
 “ India Company, and consequently this  
 “ Board, have a very great concern in every  
 “ step taken in that prosecution, whether it  
 “ be actually begun, or intended.”

*Minute of GENERAL CLAVERING.*

8th May, 1775\*.

“ In reply to what the Governor General  
 “ has just said, I conceive that the protection  
 “ of the inhabitants of Bengal is immediately  
 “ trusted to our care, and that it properly be-  
 “ longs to us to represent to the Judges such  
 “ matters as may appear to us, wherein they  
 “ have acted improperly, either wilfully or  
 “ ignorantly. In the present instance, they  
 “ probably are ignorant, how much a close  
 “ confinement may endanger the life of this  
 “ man, which is of so much importance to  
 “ the public, for proving an accusation, which  
 “ he has made of *venality* in the Governor Ge-  
 “ neral.”

\* Page 558.

*Extract of a Minute of CLAVERING, MONSON,  
and FRANCIS.*

*Sept. 15, 1775.*

“ After the death of Nundcomar, the Governor, we believe, is well assured that no man, who regards his safety, will venture to stand forth as his accuser.

“ On a subject of this delicate nature, it becomes us to leave every honest man to his own reflexions. It ought to be made known however to the English nation, that the forgery, of which the Raja was accused, must have been committed several years ago; that in the interim he had been protected and employed by Mr. Hastings; that his son was appointed to one of the first offices in the Nabob's household, with a salary of one lack of rupees; that the accusation, which ended in his destruction, was not produced till he came forward, and brought a specific charge against the Governor General of corruption in his office.”

*Ditto of ditto.*

“ We agree with Mr. Hastings, that not only he himself, but many other persons in  
“ this



“ this settlement, have reason to thank God,  
 “ as he expresses it, for the institution of this  
 “ Court.”

*Ditto, dated Nov. 21, 1775.*

“ It seems probable, such embezzlements  
 “ may have been universally practised. In the  
 “ present circumstances, it will be difficult, if  
 “ not impracticable, to obtain direct proof of  
 “ the facts. The terror, impressed on the minds  
 “ of the natives by the execution of Maha  
 “ Rajah Nundcomar, is not to be effaced;  
 “ for, though he suffered for the crime of  
 “ forgery, yet the natives conceive he was ex-  
 “ ecuted for having dared to prefer complaints  
 “ against the Governor General.

“ This idea, however destitute of founda-  
 “ tion, is prevalent among the natives, and  
 “ will naturally deter them from making dis-  
 “ coveries, which may be attended with the  
 “ same fatal consequences to themselves.

“ Punishment is usually intended as an ex-  
 “ ample, to prevent the commission of crimes;  
 “ in this instance, we fear, it has served to  
 “ prevent the discovery of them.”

*Ditto*

*Ditto, March 21, 1776.*

“ Some of the facts, with which he (Mr. Hastings) has been personally charged, have been proved. The presumptive evidence, in support of the rest, will, we apprehend, lose none of its force, by the precipitate removal of Maha Rajah Nundcomar.”

Now, Sir, if it be true that there is a manifest inconsistency, a palpable contradiction between these declarations, and our intermediate proceedings on the 16th August, 1775, I have brought that inconsistency and contradiction plainly and distinctly into your view. I am sure I can satisfy the Committee that it does not exist. In the first place, you will allow me to say that, setting aside all consideration of moral character, and claiming nothing in favour of General Clavering, Colonel Monson, and myself, but that we shall not be taken for idiots, it is not very likely that, having repeatedly charged the prosecution and execution of Nundcomar against Sir Elijah Impey, as a political measure of the most atrocious kind; having so often recorded that opinion on the proceedings of the Council, we should almost at the same moment, voluntarily, and without

without any apparent reason, deliberately contradict ourselves, and record our own condemnation on the face of our proceedings. Is it a thing to be believed, that having advanced *such* a charge, we should so lightly abandon it, and that, having abandoned, we should resume and re-affert it, without once attempting to reconcile or explain the inconsistency of our conduct, if the idea of that contradiction, which is now urged and insisted on, had ever occurred to us? Is it likely that, while we were contending with Mr. Hastings for the good opinion of the Court of Directors, we should have placed ourselves before them in a point of view, which must have utterly annihilated their confidence in us?—Sir, I affirm that, in fact, we did no such thing. The terms of ~~my~~ opinion of the contents of the paper, which I proposed should be destroyed, are, I see, particularly relied on. I desire they may be strictly examined. I said that to send to the Judges a copy of Nundcomar's petition, would be giving it much more weight than it deserved; that I considered the insinuations contained in it against them as wholly unsupported, and of a libellous nature. I thought and said so then. I think and say so still, in  
the

the extent and manner in which they were stated in that paper. The person, in whose name it appeared, was dead. He had, whether justly or unjustly, legally or illegally, been convicted of a crime, and had suffered an ignominious death. Even if he had been respited after conviction, his evidence would have been useless, for his credit was gone. A petition from such a person, accusing his Judges, could have no sort of weight. It came before us without a responsible accuser, without a proof, or evidence of any kind; I therefore said it was *wholly unsupported*. No man, I presume, will deny that it was in strictness of *a libellous nature*. I asserted then, as I assert now, that it was a libel on the whole Court of Justice, in the strict and proper sense of the word. The dreadful charge contained in it, included *all* the Judges, concerning two of whom (Sir Robert Chambers and Mr. Hyde) we never had a suspicion of the motives, which we attributed to Sir Elijah Impey, though I am far from acquitting them of all blame. Concerning another of the Judges, the late Mr. Lemaistre, though we saw him united in the closest intimacy with the Chief Justice, and ready to support his opinions on all occasions,

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with

with a degree of zeal and passion which, however sincere, was not to be excused, yet in that, which constitutes the deadly guilt of the transaction, we never suspected him to be concerned;—in a confederacy I mean with Sir Elijah Impey to take off Nundcomar, in order to save Mr. Hastings from the effect of that man's evidence. We were bound therefore to treat the petition as an indiscriminate libel against a whole Court of Justice. Is there any thing in that resolution, or in the terms of my opinion, on which it was founded, that under any, I will not say fair and liberal, but under the most rigorous construction, can be understood to express or signify that we thought the paper *false*, as well as libellous of all the Judges? This is no new distinction, set up by me to serve the present purpose. It is no after thought, no *ex post facto* vindication of my conduct. I can prove to the Committee, that I always made the same distinction between an accusation and a libel. When Mr. Hastings accused me personally, about three months before, of presenting a libel against him to the Board, my answer to him stands recorded in the following words:



*Extract of a Minute of Mr. FRANCIS.**March 21, 1775.*

“ The Governor General, who had long ex-  
 “ pected the appearance of such a letter, and  
 “ was apprised of the contents of it, made no  
 “ objection, however, to its being received  
 “ and read at the Board. When the man,  
 “ who advances a specific charge, declares  
 “ himself ready to come forward and support  
 “ it, and to hazard the consequences of fail-  
 “ ing in his proofs, it may still indeed be pre-  
 “ sumed that the charge is false; but it does  
 “ not partake of the nature of a libel. A li-  
 “ beller advances charges, which he does not  
 “ intend, or is unable to make good. When  
 “ called upon to appear and produce his evi-  
 “ dence, he shelters himself, sometimes in the  
 “ obscurity, sometimes in the superiority of  
 “ his situation, and leaves the accusation with-  
 “ out an accuser, to operate as far as it can,  
 “ in the opinions of men, against the honour  
 “ and reputation of the party accused. Rajah  
 “ Nundcomar is not an obscure person in this  
 “ country, nor does he in this instance act the  
 “ part of a libeller. He is himself of very  
 “ high rank; he publickly accuses the Gover-



“ nor General of misconduct in his office, and  
 “ desires to be heard in person in support of  
 “ his charge.”

This is my defence against the charge, as it affects us collectively on the fate of our proceedings; and I willingly submit to your judgment, whether the avowed ostensible reasons, publicly assigned by me, be not sufficient to account for my public official conduct on the occasion, and to acquit me of the present charge of contradiction. But had I no other motives for what I did, beyond those which I have assigned? Undoubtedly I had, and I am ready to declare them. Addressing you, as I do, under an honourable and moral obligation, as powerful and coercive as any, that law or religion can impose upon the human mind, I should hold myself a perjured man, if called upon, as in effect I am, for the whole truth, I reserved any part of it from your knowledge. My secret predominant motive for proposing to destroy the original paper produced by General Clavering, was to save *him*, and *him* alone, from the danger, to which he had exposed himself by that rash inconsiderate action. Yet the step I took was not immediately taken on

my own suggestion. As soon as Mr. Hastings proposed that a copy of the paper should be sent to the Judges,—a step suspicious on the face of it, and by which it was impossible any good purpose could be answered,—Colonel Monson started at it, and desired me to go with him into another room. Possibly Mr. Barwell may recollect the circumstance. He then said, “ I suppose you see what the Governor means. If the Judges get possession of the paper, Clavering may be ruined by it.” My answer was, “ Why, what can they do to him?” To that he replied, “ I know not what they can do; but, since they have dipped their hands in blood, what is there they will not do?”—He then desired me to move that the original paper should be destroyed by the hands of the common hangman. This short conversation passed very nearly, I firmly believe, if not precisely, in the terms in which I have related it. It is not possible I should ever forget or mistake the substance of it. If I am charged with having acted a feeble, pusillanimous part, let it be remembered that my fears, whether well or ill founded, were not for myself; that the danger, whether real or imaginary, could

no way extend to *me*. To fear nothing when we ourselves are in no danger, is not an unquestionable proof of resolution;—much less is it a proof of timidity to fear every thing for the safety of a friend. It was my opinion, however, and is so at this hour, that the danger to General Clavering was real and serious. The author of the libel was dead. General Clavering had made himself the publisher, and put himself into the power of his enemies. I cannot bring before you in evidence the state of the settlement at that time; the great power that was confederated against us, and the universal combination of all ranks of Europeans to support that power in all its operations. We were sent out by Parliament to enquire into and to reform abuses. The first discoveries, that came before us, gave a general alarm. The cause of Mr. Hastings was made and declared to be the common cause and interest of all the Company's servants. We, on the contrary, were considered as their common enemy, and were at once the object of their jealousy, their fear, and detestation. With a very few exceptions, we three in effect stood alone against the combined power of two Members of the Council, one of whom was the Governor General;

against

against the Supreme Court of Judicature, against the Board of Trade, and against the united animosity and clamour of the whole settlement. If, in that state and temper of the times, General Clavering had been indicted for a libel on the Supreme Court, whose powers were in effect, to us, undefined, unlimited, and subject to no controul\*, I cannot positively affirm what would have been the consequence; but I am positively sure, that no efforts would have been spared, no methods unattempted to harass and distress him, and, if possible, accomplish his ruin. This I declare upon my honour, and am ready to declare upon my oath, was *my* motive, as I am convinced it was that of Colonel Monson, for insisting that the original paper should be destroyed. I do not expect, that the force of this motive should be felt in this place and at the present hour, as it was by *us*, upon the spot, and in the moment of ac-

\* Sir Elijah Impey, in his letter of the 15th of May 1775, (Page 563.) says, " The bounds, between the authority of the Supreme Court and the Council, are of too delicate a nature to be discussed, without there should be, which I trust there never will be, an absolute necessity to determine them."

tion. The period is too remote. The scene is too distant. The instant impression upon *our* minds cannot easily be communicated to yours. We knew we were surrounded by the snares of the law. We had no legal learning. We had no legal advice. You may speculate coolly and wisely upon our conduct ; but you will not determine equitably, if you do not endeavour to place yourselves exactly in our situation. At all events, whether we did right or wrong, we certainly did not do that of which we are accused. We never said, that the contents of Nundcomar's petition were not true. As Mr. Hastings entirely agreed with us in every thing we did, I never had a doubt that the translation was destroyed, until Sir Elijah Impey produced a copy of it at the bar of this House. Of the authenticity of this translation, you have no other evidence but that, which confesses it was obtained by means the most unjustifiable, by means, which prove, what we always suspected, that we were betrayed, by one of our own Board, to Sir Elijah Impey, and by means, which prove to demonstration the collusion and confederacy, that subsisted from the first between Sir Elijah Impey and Mr. Hastings. The existence of  
that

that well-grounded suspicion is material to our defence.

I am now to reply to that part of Sir Elijah Impey's accusation, which exclusively affects General Clavering. On my own account personally, I have no manner of concern in it. I am here the uninstructed advocate, the feeble defendant of an honourable friend, who is now no more. In *his* name, and for his cause, I claim and expect that indulgence, that favour and protection, which he, I am sure, would never have solicited for himself, but which is admitted to be due, and which this House, in fact, has liberally distributed to other defendants. The learned gentleman himself, when he appeared at your bar, was received there, as he ought to be, with favour and indulgence. He was received there, with what I believe is not quite so common, though perhaps equally proper, with distinguished marks of protection. But if indulgence, if favour and protection are due to a person, who is present to defend himself, who is himself a man of great learning and experience, and who can at any time collect and command the united learning of his profession, and summon it to his assistance : how much more are they due to a man  
of



of great character, who is not here to plead his own cause; who is not only absent, but dead, and who died in the service of his country. Not, indeed, in the field of battle, where his gallant mind would have led him, but in a vile, vexatious contest with men;—I will not attempt to qualify them;—General Clavering thought himself degraded by a contest with such men.

In this transaction, I cannot undertake to answer for all the motions<sup>26</sup> of his conduct. I think I can for some of them. But assuredly, Sir, I shall not attempt to explain what I never understood; that is, with what intention, and for what possible purpose, he brought the paper before the Board. Neither is that question material at present. The questionable words in his Minute of the 14th of August, 1775, when he produced the Petition of Nundcomar, are these: “As I imagined  
 “that the Paper might contain some request  
 “that I should take some steps to intercede  
 “for him, and being resolved not to make any  
 “applications whatever in his favour, I left  
 “the Paper on my table till the 6th, which  
 “was the day after his execution, when I  
 “ordered it to be translated by my interpreter.”—On this proceeding, the question is

too obvious not to occur instantly to every man who hears me, *why had he resolved not to make any application whatever in favour of Nundcomar?*

In attempting to account for an act done by another, so many years ago, and to verify the motives of the person who did it; you will not expect that the evidence should amount to demonstration. The best that I can offer you, and the utmost the case will admit of, is strong probability and fair conjecture. The peculiar character and known principles of General Clavering must be taken into the account. Remember that you are trying a cause of honour in a Court of Honour, in the *forum conscientiae*, which exists in the heart of every honourable man, not in a Court of Law. You cannot fairly pronounce upon the man, without knowing and considering the general principles of his life. Now, Sir, I affirm of General Clavering, what I believe will not be disputed by any person who knew him, that his moral mind and character were strictly and severely upright; that he determined every question that came before him with rigid justice; that his delicacy, in every thing that appeared to him to touch his honour, was more than scrupulous, and bordered, if possible

sible, upon excess. I have sometimes told him so, when I have seen him refuse little complimentary presents of fruit, or flowers, sent to his family, and order them to be returned.—He was a man very tender of public reputation; very fearful of reproach; and particularly fearful of the imputation of supporting and encouraging the accuser of Mr. Hastings. With these principles, he might possibly think that it did not become him to intercede for a man found guilty of a capital offence. But it is much more probable, and more material to his present vindication, that he was well convinced his intercession would do mischief instead of good, and would rather hasten than retard the execution of Nundcomar. Mr. Farrer tells you in his evidence\*, that when he proposed to the General to receive and transmit to the Judges, a Petition of Nundcomar addressed to the Governor General and Council, his answer ended with these words, “*nor indeed did he think it would do any good.*” That he had solid and sufficient reason for entertaining that opinion, I believe I can demonstrate. Many gentlemen, I dare say, who heard Sir Elijah Impey’s fugitive de-

fence at the Bar, went away with an impression, that General Clavering, Colonel Monson and I, never took any formal steps in favour of Nundcomar; and that if we had interceded for him, it might probably have saved his life. Whether the Judges would or would not have yielded to our intercession, is a question, which no human tribunal can decide. You may form a judgment of it, however, by observing how the Court acted, when we really did intercede with them in favour of Nundcomar, in instances of no importance to the real purposes of justice, though very important to the unfortunate man himself. I shall state the facts I allude to, in the terms in which they are recorded.

On the 8th of May, 1775,\* a Petition was received from Rajah Nundcomar to the Governor General and Council, which, after stating many other particulars, very deserving of the attention of the House of Commons, concludes with the following words,—  
 “ The Honourable President, I am well assured, is fully sensible of the facts I allude to;—It may be requisite to explain to the rest of the Honourable Members of the

\* Page 552.

“ Board, that the institutions of our religion  
 “ strictly enjoin a number of ablutions, pray-  
 “ ers, and other ceremonies to be performed  
 “ by the sect of Bramins, before they can  
 “ take any kind of food. Nothing of this  
 “ can be performed in the place where I now  
 “ am ; and, could even these obstacles be  
 “ surmounted, the place itself, as being in-  
 “ habited by men of a different religion,  
 “ would prevent my receiving any sustenance  
 “ without breaking those rules, which I have  
 “ hitherto religiously observed. I therefore  
 “ humbly request, that I may be permitted  
 “ to reside, under as strict a guard as may be  
 “ judged requisite, in some place where these  
 “ objections may be obviated.”

After a long and careful examination  
 made by the Board into the truth of this re-  
 presentation, I moved\*, “ That the Sheriff  
 “ and his Deputy should be directed to wait  
 “ on the Chief Justice, on the part of the  
 “ Board, to represent to him the situation of  
 “ the Rajah Nundcomar, whose religion, as  
 “ he had informed the Board, had obliged  
 “ him to deny himself sustenance in the par-  
 “ ticular circumstances of his present con-

\* Page 557.



“ finement; and to desire the Chief Justice  
 “ would consider of granting the Prisoner  
 “ such relief, as might be consistent with the  
 “ strict security of his person to answer to the  
 “ charges brought against him; and that a  
 “ copy of the latter part of the Rajah’s Pe-  
 “ tition to the Board should be delivered to the  
 “ Sheriff.” Colonel Monson and General  
 Clavering agreed.

The Governor General said, “ I object to  
 “ the Motion, because the same representa-  
 “ tion may be made by the Prisoner himself  
 “ to the Chief Justice; and I think, therefore,  
 “ it would be improper that it should be con-  
 “ veyed to him through the authority of Go-  
 “ vernment.”

In reply to this message Sir Elijah Impey,  
 in his letter of the 9th of May, thought pro-  
 per to say \*,

“ I must make it my request, that the  
 “ Maha Rajah may be acquainted by the  
 “ Board that, if he has any further appli-  
 “ cation to make for relief, he must ad-  
 “ dress himself immediately to the Judges,  
 “ who will give all due attention to his re-  
 “ presentations; for should he continue to  
 “ address himself to the Board, that which



“ will, and can only be obtained from prin-  
 “ ciples of justice, may have the appearance  
 “ of being obtained by the means of influence  
 “ and authority, the peculiar turn of mind of  
 “ the natives being to expect every thing from  
 “ power, and little from justice.”

In another letter, dated May 15, 1775, he  
 says \* :

“ I did not, nor do not question the autho-  
 “ rity of the Board in receiving Petitions; I  
 “ carefully restricted what I said to *this indivi-*  
 “ *dual Prisoner*; I did not desire his Petitions  
 “ should not be received; but, when received,  
 “ if they were to require any thing from the  
 “ Judges or the Court, that the answers given  
 “ to those Petitions should be, that he must  
 “ apply himself directly to the Judges; and  
 “ this I did to avoid the imputation I then  
 “ alluded to, and which would be equally de-  
 “ rogatory to the character of the Council,  
 “ as that of the Judges.

“ The particular reason, which called upon  
 “ me in this case, to make that requisition,  
 “ was the reports publicly circulated in this  
 “ town, that, if the Judges could not be pre-

“ vailed upon to release the Maha Rajah, he  
 “ he would be delivered by force.”

This supposed report of an intention in the  
 Commander in Chief and two of the Council,  
 to release the Prisoner *manu forti*, was not in-  
 considerately advanced or abandoned by the  
 learned Gentleman. After we had forced him  
 to declare, as he did in his letter to the Board  
 of the 30th of May 1775\*, “ That he knew  
 “ it to be totally groundless; that he again  
 “ and again disclaimed ever having given  
 “ any credit, and detested the thought of  
 “ adding weight to so scandalous a report,”  
 he revived it in his letter to the Secretary of  
 State, of the 20th of January 1776, in the fol-  
 lowing words: “ It should be known that  
 “ the conduct of the Council, (*meaning the*  
 “ *majority*) to the Judges, and to the Pri-  
 “ soner during his confinement, had raised an  
 “ almost universal belief in the Natives, and  
 “ even among the Europeans, that the Pri-  
 “ soner would be *protected from justice*, in de-  
 “ fiance of the Court.”—And now he re-  
 sumes, and insists upon it once more at the Bar  
 of this House. I leave it to him to recon-  
 cile an imputation of such a nature, if he can,  
 to that high approbation, with which he says

we afterwards received the execution of Nundcomar. But, in what light did General Clavering consider it? Sir, the imputation of a design to resist the Civil Power, to oppose the Execution of Justice, appeared to him not only so scandalous, but so dangerous, so particularly levelled at *him*, as a Military Man, as Commander in Chief of the Army, that he thought it necessary, for his safety, to exculpate himself from it by oath\*. I say, *for his safety*, because I am firmly of opinion, that he would have been in as great danger as Nundcomar, if the Judges could have found any thing criminal to have laid to his charge. Colonel Monson and I, though not the immediate objects of that infamous calumny, thought it right to take the same oath. From this extraordinary fact, I leave it to you to conclude, what must have been our opinion of the personal security of our situation.

On the 30th of May, the Chief Justice thought fit to write us a very long letter (on the subject of our interposition in behalf of Nundcomar,) in which he said†,

\* Page 565.      † Page 569.

“ As to communicating Petitions to the  
 “ the Judges, I apprehend that no Board,  
 “ even of the highest authority in England,  
 “ can refer any matter, either to a Court of  
 “ Justice, or any Judge thereof, otherwise  
 “ than by suit legally instituted.”

✓ On the 23d of June\*, the Chief Justice declared from the Bench, that the Governor General and Council, whom he considered as nothing more than as Agents of the East India Company, could only apply to the Court by humble Petition, and that the Court could not receive in future any letters or messages but in that form.

✓ *Extract of a Declaration from the Bench, made by Sir ELIJAH IMPEY on the 23d of June, 1785.*

“ The Company, as well as all other Ap-  
 “ pellants, must not claim it, but prefer an  
 “ humble Petition. This being thus explain-  
 “ ed, to prevent any further altercations of  
 “ this nature, the Court must inform the  
 “ Board that they cannot (respect being had

“ to the dignity of his Majesty’s Courts, and  
 “ to the welfare of the country) receive in  
 “ future any letter or messages but in that  
 “ form.”

On the 27th of June\*, we transmitted to the Judges a translation of a letter addressed to the Governor General and Council, in favour of Nundcomar, by the Nabob Mobaric ul Dowlah, Subadar of the Provinces of Bengal, Bahar, and Orixá; titular indeed, for to that state was he reduced, but the only rightful representative of the Sovereignty, and still acknowledged to be the Nazim, or Chief Criminal Magistrate of the country. Whether the Judges gave any answer to that specific application from the Nabob, through the Governor General and Council, I cannot discover. I rather suspect that, as Sir Elijah Impey knew the reference had passed *unanimously* at the Board, he thought it best to take no notice of what he could not conveniently condemn without a censure of his friends.—But observe how he acted, when he found us alone. On the 20th of June, the

\* Page 583.

Governor General and Council had resolved to address the Judges in behalf of the Nabob's Vakeel, for whom we claimed, as well on the part of the Prince whom he represented, as on the part of our Government, by whom he was received, the rights and privileges of a public Minister \*. Mr. Hastings and Mr. Barwell dissented, and refused to sign the letter. I beg leave to read to you an extract from the answer, which the Judges sent us the next day by a Master in Chancery †:

“ That the Court is of opinion, that all  
 “ claims of individuals ought to be made di-  
 “ rectly to the Court by the individuals, and  
 “ not by the authority of the Governor Ge-  
 “ neral and Council.

“ That it is contrary to the principles of  
 “ the English Constitution, for any person or  
 “ persons to address a Court of Justice by  
 “ letter missive, concerning any matter pend-  
 “ ing before such Court; and that the higher  
 “ the station of the person or persons so ad-  
 “ dressing, the act is the more unconstitu-  
 “ tional.”

\* Page 606—7.      † Page 610.

Finally,



Finally Sir, I beg leave to read to you an extract of what is called \* *the unanimous opinion of the Court, delivered (on the 1st of July) by the Chief Justice, in consequence of a letter signed J. Clavering ;—George Monson ;—P. Francis.*

“ It is with the deepest concern we find the  
 “ Council still persist to address the Court by  
 “ letter, on subjects pending in Court, or on  
 “ which the Court have given their opinion ;  
 “ and that, notwithstanding the frequent de-  
 “ clarations, and unanimous opinion of the  
 “ Court, upon the impropriety of that mode  
 “ of address.”

After all this had passed, it is not much to be wondered at, that General Clavering should resolve not to make any more applications in favour of Nundcomar.

You have seen, that we interceded for him with the Judges. You have seen, in what manner our intercession was received. It is proper you should know, what the subject and occasion were, which drew down so many censures and menaces upon us. As soon as we received Nundcomar's petition of the 8th of May, the conclusion and prayer of which

we immediately resolved to communicate to Sir Elijah Impey; we examined the Sheriff and Under Sheriff, concerning the circumstances of Nundcomar's confinement, and of his situation in the goal. From their evidence it appeared, that he was committed on the 6th; and from that time, I think about forty hours, had refused to take any sustenance. The next day, the Chief Justice's answer to our message was received in Council.

He desired the Sheriff and Under Sheriff to inform us “ that Rajah Nundcomar was  
 “ not committed by him, and that he had no  
 “ authority to interfere in the affair, there be-  
 “ ing felony expressly charged in the war-  
 “ rant.” General Clavering then said\*, “ I  
 “ acquaint the Board that I have received a  
 “ letter from Mr. Joseph Fowke, who is just  
 “ come from visiting Maha Raja Nundcomar;  
 “ acquainting me, that it is the opinion of  
 “ the people, who were about him, that they  
 “ do not think he can live another day with-  
 “ out drink. He says his tongue is much  
 “ parched, but that his spirit is firm. In the

\* Page 560.

“ conversation that he had with the Raja, the  
 “ Raja told him, *do not trouble yourself about*  
 “ *me. The will of heaven must be complied with.*  
 “ *I am innocent.*” I immediately moved that  
 the goaler might be sent for to inform us whether  
 Rajah Nundcomar had really taken no sustenance  
 since his confinement, and in what situation the  
 Raja then was. When he came, I questioned him  
 myself, and it appeared by his examination, that  
 the Rajah had then taken no sustenance for sixty-  
 three hours ;—that the jail was crowded ; that it  
 had not been so full before, and that there were  
 at that time twenty-three felons in it, besides  
 other prisoners. I then moved “ that the infor-  
 “ mation laid before the Board by General Claver-  
 “ ing, and the further account given by the jailer,  
 “ should be communicated to the Chief Justice,  
 “ by the Secretary, on the part of the Board ;  
 “ and that the Secretary should wait upon him  
 “ accordingly as soon as the Board broke up.”  
 This was agreed to and ordered.

On the same day, we received a letter from  
 Sir Elijah Impey to inform us that he had  
 sent for the pundits, and examined them con-  
 cerning the pretended scruples of Nundcomar.  
 The result was, *that there were no grounds for*

*altering the mode of confinement of the Maha Raja.*

He assured us\*, “ that the Judges would,  
 “ as far as by law they might, remit the ri-  
 “ gour of the English law, in all cases,  
 “ where its effects might be prejudicial to the  
 “ natives on account of their religion; and  
 “ perhaps in some cases, would yield even to  
 “ prejudices, if national and deep rooted.  
 “ But they must not suffer the pretence of  
 “ religion to be set up for the purposes of  
 “ eluding the ordinary course of the law.”

Accordingly the unfortunate man was abandoned to his fate; or, if you will, to the unavoidable consequence of his own obstinacy. Whether his scruples were well, or ill founded, is more than I am able to explain. We know with certainty that the Gentoo religion is, in a great degree, ceremonial; and in a very low degree, if at all, dogmatical. It prescribes many things to be performed, many others to be abstained from, but not much to be believed. It forms the occupation, rather than the creed of a mild, inoffensive, innocent people. To preserve what they think a religious purity, to save themselves from what they deem to be

indelible pollution; I do not say that they will act with vigour, (that perhaps is not in their nature) but I know they will suffer and endure with a patience more than human. Can you doubt that Nundcomar was in earnest in the scruples he profest, when I tell you that, while the Judges ~~were debating with us, whether he ought to be relieved or not,~~ and while Sir Elijah Impey debated the point with us, whether Nundcomar ought to be relieved or not, and while he was amusing himself with writing us long letters on the subject, the old man, above seventy years of age, resolutely persisted in refusing all manner of food for more than eighty hours? In so much that the Judges themselves, alarmed at the idea and possible consequences of an *illegal murder*, gave an indirect permission to the jailor, as it were without their knowledge, to pitch a tent for Nundcomar out of the limits of the prison, in which, at proper hours, he might perform his ablutions and prepare his food. Sir Elijah Impey takes care to tell you, what special pains he took to inform himself, whether there was any real foundation for the religious difficulties pretended by Nundcomar\*.

He sent the pundits, whom he calls *the keepers of the consciences and the oracles of the Gentoos*, to examine the place of his confinement, and they, it seems, told him that \*, “ a Bramin “ could not properly perform his ablutions, or “ eat and drink in the place where Raja Nund- “ comar was confined. But, if he did, he “ would not lose his cast, but he must perform “ a penance.”

Now, Sir, it is proper you should know, that these pundits, in point of circumstances and situation, were very low and indigent persons; that they received small salaries for their attendance on the Supreme Court, and were removeable at the pleasure of the Judges. Admitting nevertheless that, in this state of dependance, they might have had courage enough to deliver an opinion adverse to the apparent inclination of the Chief Justice, on whom they depended, and that the opinion, which they did deliver, was sincere, it ought not to have prevailed with Sir Elijah Impey against what he saw was the internal conviction of Nundcomar, demonstrated by a determination to die, rather than save his life by submitting to pollution. He ought to have

\* Page 562.



known, that the Hindoos are not only divided into casts, but that, in the same cast, there are different orders and degrees, not only distinct in point of rank, but separated by religious rules and institutions, attached and appropriated to every division of every cast, and which can neither be renounced or invaded without a crime. The Bramin of a lower class is no judge even of the ceremonies, much less of the religious scruples of a superior Bramin. When Nundcomar was informed of the report made by the pundits, the old man smiled, and said, “ these men are not of *my* level. They “ are no judges of *my* conscience.”

Want of food was not the only distress, to which this unfortunate man was obliged to submit. He was confined in a miserable jail, crowded with debtors and felons of all nations, ranks and religions; and though he might have had every accommodation, which such a place could afford, still I affirm, that it must have been to *him* not only a loathsome, but a dangerous, cruel, and tyrannical confinement. Mr. Naylor, the Company’s Attorney, committed by Sir Elijah Impey for a contempt of the Court, in not answering interrogatories, died in consequence of being shut

up there a few weeks. Others, to *my* knowledge, have suffered by it severely.

In such a prison, we knew that Nundcomar was perishing for want of food.—That we felt the most serious anxiety for his situation, Sir Elijah Impey may affect to doubt, if he thinks proper. That General Clavering sent constantly to enquire about his health, is charged and admitted. But, in this offence, he had accomplices, it seems, whom Sir Elijah Impey has thought it perfectly proper and becoming in him to include in the charge. For the sake of calumniating the memory of Sir John Clavering, he brings *the ladies of his family* into public notice, into the judicial view of the House of Commons. Sir John Clavering's daughters are accused of sending every day to the prison with compliments to the Rajah, and inquiries about his health. One would think that, even if there had been any thing improper in what they did, the consideration due to their sex and youth, to their beauty and accomplishments, might have protected them from so ungenerous an allusion to their names and conduct. But it is in the exercise of their charity, in the display of that benevolent virtue, which gives new lustre to youth

youth and beauty ;—it is in the performance of the most amiable of all human duties, that the daughters of General Clavering are introduced to be evidence against their father, and even Lady Clavering against her husband. The charge means nothing, if it be not intended to convey, that General Clavering had some improper connection and correspondence with the accuser of Mr. Hastings. Without that application, the mention of the ladies of his family would be mere malice, and nothing else. But, why not accuse *me* too of the same offence ? I was at least as guilty of it as they. I sent messages every day to Nundcomar. If, knowing his situation so exactly as I did from the Sheriff, I had neglected him at such a time, I must have lost all sense of humanity. For the same sort of purpose, we are accused of having paid a visit of ceremony to Rajah Nundcomar. I answer it by asking, *why should we not ?* He was a person of the first rank in his own country.—He belonged to the highest order of the Bramins.—I believe he was their Chief.—He had been Prime Minister of the Government under Meer Jaffier, and his son. Was such a man not intitled to a visit from General Clavering, Colonel Monson and *me ?*—

*me?*—In point of rank, he was far superior to any of us. But, what was the fact?—On the day\*, after he was examined before the Judges, at Sir Elijah Impey's house, on a charge of a pretended conspiracy against Mr. Hastings, when the charge was dismissed, and when his accusers were not even bound over to prosecute, we paid him a short visit at his house. I am sure it did not exceed ten minutes. We saw plainly enough for what reason he was persecuted, and we thought it became us to pay him that compliment, as a public mark of countenance and good opinion. We did not promise him protection, for unfortunately we had no power to protect him.

I have given you now an exact and faithful account of a transaction, which, I think, Sir Elijah Impey would never have appealed to, if he had not been blinded by a guilty mind. He flattered himself that he had contrived to make it impossible to detect the falsehood of his story. I believe you are satisfied, that he was, from the first, united in close collusion with Mr. Hastings; that we were not mistaken in suspecting, that our secret debates in Council were betrayed to

\* 20th April, 1775.

him;—

him ;—that our ordering Nundcomar's petition to be burned, was founded on an apprehension materially connected with that suspicion ;—that, by that resolution, we never meant to pronounce upon the substance or merits of the petition ; and that the learned gentleman himself never once thought of giving the construction to what we said, or of drawing the conclusion from what we did, which he now advances, for the first time, almost thirteen years after the event. If, on this last material point, there be yet a doubt in the mind of any man, I can remove it by the best of all evidence, by that at least, which usually makes the deepest impression,—by the evidence of the party against himself. Sir Elijah Impey's letter to the Secretary of State, dated the 20th of January 1776, is now before me. It consists of seventeen folio pages in print. It appears to have been written on purpose to vindicate his character from the aspersions *uniformly* thrown upon it, by Clavering, Monson, and Francis, for his conduct in the business of Nundcomar, to charge them with having *constantly* imputed to the Court the most atrocious motives for their conduct, by strong insinuation, malignant sarcasm, and severe censure ; and to accuse them of attempting, on sundry occasions, to over-



awe, or reduce the authority of the Supreme Court.

I beg leave to read to you a few short passages out of this studied performance\*.

1. " The Governor General has within  
 " these few days communicated to me several  
 " Minutes, signed by General Clavering, Colonel Monson, and Mr. Francis. They  
 " are severally fraught with direct charges,  
 " or plain insinuations, against the characters  
 " of the Judges, and the conduct of the  
 " Court of Judicature. Some seem more particularly levelled at *me*.

2. " The crimes either directly charged upon  
 " on the Judges, or indirectly insinuated,  
 " (which, I think, we have more reason to complain of, as being less liberal) are of so horrid and detestable a nature that, if they are  
 " well grounded, ought to subject each of  
 " them to the highest punishment a Parliament Impeachment can inflict, and brand  
 " their names with infamy to the latest posterity.

3. " I do sincerely attribute the offensive  
 " parts of the paragraphs to imaginations heated by party disputes; and entertain so high

\* Vide Appendix to the first Report of the Select Committee in 1781; No. 27.



“ a sense of the honour of the Gentlemen,  
 “ that at a period some distance from the  
 “ events, which shall have given time for  
 “ their judgements to cool, they *will* them-  
 “ selves be shocked at what they have wrote,  
 “ and be willing to retract the charges.”

I agree with this learned gentleman intirely in the definition he has given of his crimes, as well as in his opinion of the punishment they deserve. But I call upon him to explain to you, if he can, why, in January 1766, he looked forward to a *future* period for a *future* retraction of the charges we had stated, of the falsehoods we had written against him, if it be true, as he now tells you, that we had already abandoned those charges, if we had already acknowledged the falsehood of our assertions, and borne a clear unquestionable testimony to the rectitude of his conduct. The distinction he endeavours to set up between our *Minutes*, which he affirms he never saw, and our public act in burning the paper, will be no relief to him. He says he never saw our *Minutes* on the subject. Be it so, the assertion is incredible;—but I abandon that question. At the present moment, I do not desire you to believe what he denies, but only

to remember, what he has admitted. He was in possession of the paper, and knew that we had ordered it to be destroyed. If he had really conceived that, by that resolution, we meant to express or imply an opinion of the *falsehood* of the contents, he ought to have concluded from it then, as he pretends to do now, that we ourselves had acquitted him, by a public voluntary act of our own, of all the atrocious charges we had brought against him. In that sense, if the act in question was any proof at all, it was full as good a proof of our favourable opinion of him, as any thing we could have said in our Minutes upon the subject.—In this long letter he never mentions or alludes to either one or the other. Yet that was the time, if ever, for him to have availed himself of the evidence of the persons he calls his enemies, against themselves, and to invalidate any declarations they might have made against him on other occasions : instead of appealing then to the recorded fact,—to what he now calls irresistible evidence of our opinion in his favour, he expressly looks forward to a distant day, when he expects that we shall be ready to condemn ourselves, when we shall

be

be shocked at what we have written, and be willing to retract our charges.

4. “ A public notification is professedly  
 “ made to the English nation, by which it is  
 “ attempted to persuade them, that the Court  
 “ of Judicature, established by his Majesty for  
 “ protecting the natives of this country, and  
 “ the East India Company, from the violence  
 “ and oppression of the Company’s servants,  
 “ has been by the Judges converted into an  
 “ execrable instrument in the hands of Mr.  
 “ Hastings, of destroying the innocent native,  
 “ for the sake of protecting the guilty servants  
 “ of the Company.

5. “ It should be known, that the conduct  
 “ of the Council to the Judges, and to the  
 “ Prisoner during his confinement, had raised  
 “ an almost universal belief in the natives,  
 “ and even among the Europeans, that the  
 “ prisoner would be *protected* from Justice, in  
 “ defiance of the Court.

6. “ Raja Gourdas (son of Nundcomar) has  
 “ caused it to be intimated to me, that he was  
 “ very desirous to pay his respects to me, but  
 “ is positively enjoined (he must mean *forbidden*)  
 “ entering my house by members of the Coun-  
 “ cil.”

I have no recollection of this fact, nor do I believe one word of it. It is *possible*, I confess, that Raja Gourdas might have been *very desirous to pay his respects to Sir Elijah Impey*, and for reasons perfectly coercive on the timid mind of a Hindoo. But he had no occasion for our consent. If he had asked me for my approbation of such a visit, I should certainly have told him what I thought of it. The story in effect, which you are called upon to believe, is, that Raja Gourdas was *bond-fide, very desirous to pay his respects to Sir Elijah Impey*; that is, to thank him for the murder of his father.

I shall read but one short paragraph more out of this letter. To understand it, you should know that, in one of our Minutes, we had said, *we were ignorant of any attempts to over-awe or reduce the authority of the Supreme Court.*

“ In answer to this, (Sir Elijah Impey says)  
 “ I must refer to the letters sent me by the  
 “ Council in May last, concerning Nundco-  
 “ mar; the letter addressed to Mr. Justice  
 “ Hyde and Justice Lemaistre; the *universal*  
 “ tenor of the Minutes of the Council, *whenever*  
 “ the conduct of the Judges made part of their  
 “ consultations.

In

In this passage, the terms he has selected are inclusive without exception. The *universal* tenor of our Minutes was to attack, to condemn, and to reprobate the conduct of the Supreme Court. It was so. I allow it. But, when you have received that charge from Sir Elijah Impey, when you have seen it deliberately stated and insisted on by him,—in writing,—in a formal letter to the Secretary of State for his Majesty's information, will you permit him to tell you now, that it was not true?—will you suffer him to aver against his own record? will you endure to hear him say, that we did *not universally* condemn the Judges, *whenever their conduct made part of our consultations?* for that on the very proceeding, which was essentially in question, which, he says, we had charged as a crime, *that would brand the names of the Judges with infamy to the latest posterity*, on this very proceeding, we had already said or done what must have amounted in our minds to a complete vindication of their conduct.—Even now, Sir, I am content to let him choose what single assertion he will abide by.—But no man is at liberty to assert and deny the truth of the same proposition. You see, for what reason Sir Elijah Impey was so particular



cular in stating to the Committee, that he had never, till very lately, seen our Minutes of the 16th of August 1775.

Had he admitted that he had seen the Minutes in Calcutta, his letter to the Secretary of State would, upon his present shewing, have been a direct falsehood as a charge, and palpably defective as a defence. With those Minutes before him, and understanding them in the sense of approbation or even of acquittal, he could not have said that we had *universally* condemned the conduct of the Supreme Court. Much less, while he was defending himself against the most atrocious imputations, particularly levelled at *him*, could he have omitted all mention of a fact so material to his defence, so irresistible in its nature, as that we, who accused, had completely acquitted him.

I do not mean to give the Committee any farther trouble. Either the charge, which this learned Gentleman has brought against Sir John Clavering, Colonel Monson and myself, is answered, or it is not in my power to answer it. Had he acted with the same candour to *me*, which my honourable friend has observed to *him*;—had he thought proper to  
 deliver



deliver it in writing, I would have answered it in writing. Let him deliver it even now upon paper, and I pledge myself to answer it in the same manner. Whether he does or no, it is my intention, though I do not absolutely bind myself to do so, to write down what I have said, and to offer it to the Committee. Some way or other, I mean to put him in possession of my defence. If his cause be good, let him have all advantages in defending it. Let *him* go free while he accuses; and let *me* be bound down by my defence.

A word more, and I have done. Some singular circumstances have contributed to mark me to the public eye as an object of attention. In our day it has happened, that two persons, removed from stations of the highest trust, have been accused of crimes the most atrocious that ever yet were the subject of accusation before any human tribunal;—one of them, on evidence which, in this House at least I may presume to say, may be taken for conclusive. The other is only accused.—The very first thing these persons think it necessary to do, the very first step they make towards their defence, is to declare that *I* am their enemy. Their conduct tells you, that I am  
the

the first difficulty, which they must endeavour to overcome ; that *I* am the single person, whom it is essential to their safety to attack, to calumniate, to disqualify, to discredit, and to remove. I am honoured by their objection. I am proud of the distinction. In the base, vindictive meaning of enmity, I am not the personal enemy of either of them. But I desire it to be understood, I wish to have it proclaimed, wherever my name can be known, and to whatever period it shall exist, that it is the possession which I value most, that it is the inheritance which, above all others, I am anxious to transmit to my son, that I am in moral principle opposed to the principles of these men ; that I declare and avow immortal enmity to their minds and to their conduct, and that I trust that my character and principles will be known and distinguished by an eternal opposition and everlasting hostility to the manners, the character, the conduct, and the hearts of Warren Hastings and Sir Elijah Impey.

## A P P E N D I X.

## No. I.

*COPY of a Petition from Rajah Nundcomar, confined in Goal, to the Governor General and Council, dated Calcutta, 8th May, 1775\*.*

*Honourable Sir, and Sirs,*

**A**FTER having been honoured with the confidence of the Nabob Jaffier Ally Khan, so peculiarly the friend of the English; after having discharged the first office in the Subah; after being now ten years retired from all public employments, and having seen my son appointed to a distinguished post, with this testimony, as I have been credibly informed, of the Governor's approbation of his father, that he instated my son in the post, with a view to his profiting by my experience and wisdom, I might perhaps startle the Honourable Board with an address from the

common goal, had I not in a degree prepared them for some fatal change in my situation, by a representation I made in the month of March, 1775, of the severe menaces which had been uttered against me by the Governor General. Where the first magistrate declares his determined intention of hurting an individual to the utmost of his power, the enemies of the man so marked for destruction will eagerly grasp at an opportunity of gratifying their malice; the dissolute and abandoned will find a sufficient inducement to persecute him from the hopes of gratifying the resentment of the man in power; and if the unhappy man, so devoted, have, by an upright conduct, made the wicked his enemies, malice and wickedness may unite their endeavours to complete his ruin. To advance a step further, should the first man in the State countenance one \* publicly known to be destitute of all moral principle, and as publicly known to be the enemy of the person, against whom he has denounced his resentment: should he treat a man of such principles with a degree of distinction far above his rank in life:

\* Mohunpersaud.

should

should he admit him to private conferences with him, what is the wretched object of his resentment to expect? where shall he find an asylum, when the whole body of the wicked and abandoned is let loose upon him? I mean not now, however, to deprecate the Governor General's resentment. The reasons of the encouragement afforded to my enemies, and the motives of the Governor General's resentment against me, will be sufficiently explained to the world by the representation I have already made in a former address to the Honourable Board. Should my life be taken away by the flagitious charge now laid against me, the facts before alluded to will remain upon record, the witnesses will be ready, and the proofs produceable, whenever the Governor General has courage sufficient to hear them. A charge which has been now these three years depending in a Civil Court, without the witnesses, upon whose evidence I am committed, having been once produced or mentioned, has been laid against me by men, who are marked by the public as the most turbulent and abandoned. My only intention in setting forth the services I have done, and the character I have to an advanced age supported,

is to introduce my request, that I might not suffer upon such a charge, from the base accusation, a punishment equal to that of death,—the violation of the most sacred duties of my religion. The Honourable President, I am well assured, is fully sensible of the facts I allude to. It may be requisite to explain to the rest of the Honourable Members of the Board, that the institutions of our religion strictly enjoin a number of ablutions, prayers, and other ceremonies to be performed by the Sect of Brahmins before they can take any kind of food. Nothing of this can be performed in the place where I now am; and could even these obstacles be surmounted, the place itself, as being inhabited by men of a different religion, would prevent my receiving any sustenance, without breaking those rules, which I have hitherto religiously observed. I therefore humbly request that I may be permitted to reside, under as strict a guard as may be judged requisite, in some place where these objections may be obviated.

(Signed)

NUNDCOMAR.



## No. II.

*Fort William, 9th May, 1775\*.*

## COUNCIL.

The Jailer being arrived, is called before the Board, and asked his name : he answers, "Matthew Yandel."

*Questions by Mr. Francis.*

*Q.* Whether Rajah Nundcomar has refused to take any sustenance since his commitment ; and whether you believe it to be true that he has received none ?

*A.* I do believe it to be true that he has received none. I am sometimes out upon business, but I don't know of his having received any.

*Q.* What situation is the Rajah now in with respect to his health, and his personal appearance ?

*A.* He appears to be very well, only a little daunted with the situation he is now in ; —low in spirits.

*Q.* How many hours has the Rajah been in your custody ?

*A.* He came on Saturday night, a little after ten ; it is now past one ; so that he must have been at this time in confinement sixty-three hours.

*Governor General.—Q.* Have you any other prisoners of the Bramin cast in the goal ?

*A.* I dare say I have, but I have not enquired ; we have generally of all casts in the goal.

*Mr. Francis.—Q.* How many persons have you in the goal, debtors and felons ?

*A.* Between sixty and seventy persons.

*Q.* Is it crowded.

*A.* Yes, fuller than in general ; we have not had it so full before ; we have about twenty-two or twenty-three felons ; five or six used to be a great many.

## No. III.

*Extract from the first Report from the Select Committee, in 1782 \*.*

The case of Mr. North Naylor, Attorney to the Company, is of itself sufficient to render all such complaints, in future, an affair of the extremest hazard.

Mr. Naylor, who appears to have been a person of considerable industry and abilities, was employed by the Governor General and Council to defend that Board, and some persons of distinction among the natives, against the late suits in the Supreme Court. The Supreme Court attached Mr. Naylor for a contempt, on account of some steps he had taken, under the direction, and in favour of his clients; and, on his refusal to answer a series of interrogatories, (in which refusal he was supported by his Clients) he was detained in the common goal at Calcutta, a miserable and pestilential place, upwards of a month. For these interrogatories, which your Committee conceive to be in many parts wholly unjustifiable, they refer to their report of last session, and to the Cossijurah Appendix to that report.

(No. 23.) Mr. Naylor, who was in no good state of health at the time of this rigorous imprisonment, and having had during its continuance, some family misfortunes, died soon after his release upon bail; his death being in all probability, hastened, if not caused by his sufferings under confinement.

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## No. IV.

*Copy of a Note from Mr. Mackrabie, Sheriff of Calcutta, to Mr. Francis, dated 11th May, 1775.*

Raja Nundcomar has now a tent fixed on the outside of the prison gate, for the purpose of washing and eating. He has done both this morning, but is not yet returned into his apartments in the jail, so that I cannot be admitted to him. Nilmony \* has seen him, and finds him somewhat better, though very weak. Last night he was so much al-

\* Mr. Francis's Sircar, a Bramin.

tered, that I really thought him almost in extremities—so did Tolfrey. Upon a late representation to the Judges, some time after the application made by me, they gave directions for his having this indulgence. It is, I find, to appear as the sole act of the Jailor, to avoid precedents. The authority was not given to me ; and, upon my return to town, at midnight, I found the Raja informed, and orders given for all the different preparations. You see how little share I have in it. I think I should not be quoted ; I will give you some reasons, with the particulars at large, at dinner,

I am ever faithfully,

Yours,

*Thursday Noon.*

A. M.



## No. V.

*Copy of a Letter from Mubbaric O'Dowlah, Subahdar of Bengal, to the Governor General and Council, received 27th June, 1775\*.*

If several transactions of former times are to be tried by the Act lately transmitted from the King of Great Britain, it will occasion trouble and ruin to the inhabitants of this country. The affair of Maha Rajah Nundcomar, which is now before the Court, is really hard and rigorous ; for, should the crime of which he is accused, be proved against him in the said Court, the custom of this country does not make it deserving of capital punishment : nor, as I am informed, was life formerly forfeited for it in your country ; that has only been common for a few years past. The Maha Rajah has transacted affairs of the greatest importance. When Meer Cossim Ally Khan had taken the resolution to ruin and expel the English, the Maha Rajah, in particular, exerted himself to the utmost, with my father, in supplying them with grain and money for the use



of their troops. The services of the Maha Rajah on this occasion are well known to the King of Hindostan; certainly he never could have committed so contemptible a crime. People employed in important affairs will undoubtedly have many enemies; and those, who have been active in the affair of Nundcomar, have long been his declared foes. Taking therefore into consideration the welfare of the people, I beg in particular, with respect to this affair, that the Rajah's execution may be suspended till the pleasure of his Majesty, the King of England, shall be known.

#### RESOLVED,

That a Copy of this translation be transmitted with the following Letter to the Chief Justice and Judges of the Supreme Court of Judicature.

*To Sir Elijah Impey, Chief Justice, Robert Chambers, S. C. Lemaistre, and J. Hyde, Judges of the Supreme Court of Judicature.*

#### GENTLEMEN,

We have this instant received a letter from his Excellency, the Nabob Mubbarick O'Dowlah, Muttuwanum ul Mulluk, Feroze Jung Bahader, through the hands of Roy

Rada Churn, his public Vakeel, containing an intercession in behalf of Maha Rajah Nundcomar; we conceive it to be regular in this Board to transmit it to you, and of which we shall inform the Nabob.

We are, &c.

(Signed) WARREN HASTINGS,  
J. CLAVERING,  
GEO. MONSON,  
*Fort William,* RICH. BARWELL,  
27th June, 1775. P. FRANCIS.

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## No. VI.

*Extract of Secret Consultations. Fort William  
May 16th 1775\*.*

*General Clavering.* “ I request the favour of  
“ the Governor General that he, as one of his  
“ Majesty’s Justices of the Peace, will be  
“ pleased to receive my affidavit, that either  
“ in my corporate capacity as a Member of the

\* Page 565.

“ Board, or as an individual, I never conceiv-  
 “ ed any intention, nor ever heard of such  
 “ an intention, suggested to me by any body,  
 “ that the Maha Rajah Nundcomar was to be  
 “ delivered by force from the confinement he  
 “ is in. I think it necessary to make this affi-  
 “ davit, because I find in a letter, addressed  
 “ to the Governor General and Council, by  
 “ Sir Elijah Impey, the Chief Justice of the  
 “ Supreme Court of Judicature, a paragraph,  
 “ in which he mentions, that he, the Chief  
 “ Justice, was induced, contrary to his belief,  
 “ to make the application to the Board upon  
 “ the 9th instant, that the Governor General  
 “ and Council should acquaint Maha Rajah  
 “ Nundcomar to apply directly to the Judges  
 “ instead of his applying to them, as there were  
 “ reports, publicly circulated in the town,  
 “ that, if the Judges could not be prevailed  
 “ upon to release Maha Rajah Nundcomar,  
 “ he would be delivered by force; and fur-  
 “ ther I desire to declare, that I never heard  
 “ of such a report till I read it in Sir Elijah  
 “ Impey’s letter.”

*Governor General.* “ I beg leave to submit  
 “ it to the consideration of the General, whe-  
 “ ther, on a reviewal of the words, made use  
 “ of

“ of by the Chief Justice in his letter, there is  
 “ a necessity for his giving a mere rumour so  
 “ much consequence, as to take and enter  
 “ upon the public records a solemn oath for  
 “ the refutation of it. I am morally certain,  
 “ that neither the Chief Justice, nor any other  
 “ reasonable person could entertain the most  
 “ distant suspicion of an intention in the Gene-  
 “ ral, or any other Member of this Board, to  
 “ commit so flagrant an outrage on the laws of  
 “ their country, as to attempt to rescue by  
 “ force a man committed to gaol under a legal  
 “ authority.—I do not understand the words of  
 “ the Chief Justice’s letter as expressing more  
 “ than a mere popular opinion, which is often  
 “ known to prevail without foundation, and  
 “ however improbable, to operate to the pro-  
 “ duction of the worst consequences. I have  
 “ heard of many reports said to be circulated by  
 “ Nundcomar, or his dependants, but I have  
 “ paid so little attention to them, that I really  
 “ cannot recollect any of the purport here al-  
 “ luded to ; but do not think it necessary my-  
 “ self to follow the General in the affidavit  
 “ proposed to be taken by him, if he shall  
 “ still adhere to his first declaration, for the  
 “ refutation of a charge, which I think can  
 “ nei-

“ neither light upon myself, nor any other  
 “ Member of the Council.”

*General Clavering.* “ I conceive that a de-  
 “ claration, similar to that which I have  
 “ made, is absolutely necessary for the justifica-  
 “ tion of each Member of this Government ;  
 “ because the report of an attempt to deliver  
 “ by force the Maha Rajah is made the ground,  
 “ which Sir Elijah Impey acquaints the Board  
 “ he had for his application to us to direct  
 “ Maha Rajah Nundcomar to apply for relief  
 “ henceforward to the Judges, and not to the  
 “ Council. By making this proposition, I  
 “ do not conceive myself more implicated in  
 “ the charge brought (as it seems to me)  
 “ against the Government, than any other  
 “ Member of it; but in times, when people  
 “ make a trade of informations, I think *no*  
 “ *man can be safe from the danger*, attending up-  
 “ on them, especially when reports, which are  
 “ credited by a Chief Justice (notwithstanding  
 “ his declaration to the contrary) might, in  
 “ such suspicious times, be easily converted  
 “ into a criminal accusation. It is for these  
 “ reasons, that I desired that my own affidavit  
 “ might be taken, and I could wish that the  
 “ same

“ same solemnity might be observed by every  
 “ Member of the Board.”

*Colonel Monson.* “ From the letter of Sir  
 “ Elijah Impey now before the Board, in  
 “ which there are insinuations, which may  
 “ possibly be interpreted to my prejudice and  
 “ disadvantage, I request that my affidavit  
 “ may be taken, that I never had an intention  
 “ either in my public or private character, to  
 “ use any force to release Maha Rajah Nund-  
 “ comar from his confinement by the Justices  
 “ of the Peace ; nor did I ever hear, that such  
 “ a rumour prevailed in the town of Calcutta,  
 “ until I was informed of it by the Chief Jus-  
 “ tice’s letter.”

*Mr. Francis.* “ I beg leave to declare upon  
 “ oath, that, until I saw the letter from Sir  
 “ Elijah Impey, I never heard of the report  
 “ mentioned therein ; and that I do not be-  
 “ lieve that an intention, to deliver the Maha  
 “ Rajah Nundcomar by force from his con-  
 “ finement, was ever thought of by any Mem-  
 “ ber of this Board.

*Fort William, May 16th, 1775.*

“ Whereas it has been asserted by Sir Eli-  
 “ jah Impey, in a letter, written by him to  
 “ the Governor General and Council, on the  
 “ 15th



“ 15th instant, that reports had been publicly  
 “ circulated in this town, that, if the Judges  
 “ could not be prevailed upon to release the  
 “ Maha Rajah Nundcomar, he would be de-  
 “ livered by force; we hereby most solemnly  
 “ declare, that we never ourselves conceived  
 “ such an intention, nor ever heard of such a  
 “ design in any Member of the Government,  
 “ or by any body else; nor did we ever hear  
 “ mention of such a report, till we read it  
 “ in Sir Elijah Impey’s letter above-menti-  
 “ oned.”

(Signed) “ JOHN CLAVERING.  
 “ GEORGE MONSON.  
 “ PHILIP FRANCIS.

Sworn before me,

(Signed) “ WARREN HASTINGS.”

“ *The Governor General* has declined giving  
 “ in the affidavit, as deeming it unnecessary,  
 “ but declares his entire conviction and affu-  
 “ rance, that no Member of this Board ever  
 “ conceived an intention of using force for the  
 “ release of Maha Raja Nundcomar from his  
 “ imprisonment.”

*Governor General.* “ Having already de-  
 “ clared that I thought it unnecessary to take  
 N “ the

“ the affidavit, which has been proposed, I  
 “ shall content myself with the declaration,  
 “ contained in the preceding Minute, at the  
 “ same time deeming myself under the like  
 “ obligation to adhere to the strict line of  
 “ truth, in every declaration made by me  
 “ upon record, as if I was under the tie of an  
 “ oath.”

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## No. VII.

*Translation of Nundcomar's Petition, which was  
 laid before the Governor General and Council,  
 by Sir John Clavering, 14th August, 1775 ;  
 and presented to the House of Commons by  
 Sir Elijah Impey, on the 8th February,  
 1788.*

*To the Governor General and Council.*

Within these three Soubahs of Bengal,  
 Bahar, and Orissa, the manner in which I  
 have lived, and the honor and credit which I  
 have possessed \*: formerly the Nazims of all

\* Something wanting here to compleat the sense.

these Souhabs afforded attention and aid to my good name; and from the presence of the King of Hindostan I received munfib of five thousand, and from the beginning of the Company's administration, in consideration of my good wishes to the King, the Gentlemen who had the direction of affairs at this place, and at this time the Governor, Mr. Hastings, who is at the head of affairs, did hold, and do hold me in respect; never did any loss to the State, or oppression of the Ryots proceed from me: at this time, for the fault of representing a just fact, which, for the interest of the King, and the relief of the people, I in a small degree made known, many English gentlemen have become my enemies; and having no other means to conceal their own actions, deeming my destruction of the utmost expediency for themselves, revived an old affair of Mohun Persaud, which had formerly been repeatedly found to be false; and the Governor knowing Mohun Persaud to be a notorious liar, turned him out of his house, and themselves becoming his aiders and abettors; and Lord Impey, and the other Judges have tried me by the English laws, which are contrary to the customs of this Country, in which there

was never any such administration of justice before, and taking the evidence of my enemies in proof of my crime, have condemned me to death:—But by my death the King's justice will let the actions of no person remain concealed. And now, that the hour of death approaches, I shall not, for the sake of this world, be regardless of the next, but represent the truth to the Gentlemen of the Council. The forgery of the bond of which I am accused, never proceeded from me. Many principal people of this country, who were acquainted with my honesty, frequently requested of the Judges to suspend my execution till the King's pleasure should be known; but this they refused, and unjustly take away my life. For God's sake, Gentlemen of the Council, you who are just, and whose words are truth, let not me undergo this injury, but wait for the King's pleasure. If I am unjustly put to death, I will, with my family, demand justice in the next life. They put me to death out of enmity and partiality to the Gentlemen who have betrayed their trust; and in this case, the thread of life being cut, I in my last moment again request, that you, Gentlemen, will write my case particularly to the

the

the just King of England.—I suffer, but my innocence will certainly be made known to him.

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## No. VIII.

*The following is the relation of Mr. Mackraby, the Sheriff.*

Hearing that some persons had supposed Maha Raja Nundcomar would make an address to the people at his execution, I have committed to writing the following Minutes of what passed both on that occasion, and also upon my paying him a visit in prison the preceding evening, while both are fresh in my remembrance.

Friday evening, the 4th of August, upon my entering his apartment in the goal, he arose and saluted me in his usual manner. After we were both seated, he spoke with great ease and such uncommon unconcern, that I really doubted whether he was sensible of his approaching fate; I therefore bid the interpreter inform him that I was come to shew him

him

him this last mark of respect, and to assure him that every attention should be given the next morning which could afford him comfort on so melancholy an occasion ; that I was deeply concerned that the duties of my office made me of necessity a party in it, but that I would attend to the last, to see that every desire he had should be gratified ; that his own pallan-keen and his own servants should attend him, and that such of his friends, who I understood were to be present, should be protected. He replied, that he was obliged to me for this visit, that he thanked me for all my favours, and intreated me to continue it to his family ; that fate was not to be resisted, and put his finger to his forehead, “ God’s will must be done.” He desired I would present his respects and compliments to the \* General, Colonel Monson, and Mr. Francis, and pray for their protection of † Rajah Gourdaß ; that they would please to look upon him now as the head of the Bramins. His composure was wonderful ; not a sigh escaped him, nor the smallest alteration of

\* The General, Sir John Clavering.

† Rajah Gourdaß, his son.



voice or countenance, though I understood he had not many hours before taken a solemn and affectionate leave of his son-in-law Roy Radichurn. I found myself so much second to him in firmness, that I could stay no longer. Going down stairs, the jailor informed me, that since the departure of his friends, he had been writing notes and looking at accounts in his usual way. I began now to apprehend that he had taken his resolution, and fully expected that he would be found dead in the morning; but on Saturday the 5th, at seven, I was informed that every thing was in readiness at the goal for the execution. I came there about half an hour past seven; the howlings and lamentations of the poor wretched people who were taking their last leave of him is not to be described. I have hardly recovered the first shock while I write this, above three hours afterwards. As soon as he heard I was arrived, he came down into the yard, and joined me in the jailor's apartment. There was no lingering about him, no affected delay; he came chearfully into the room, made the usual salam, but would not sit till I took a chair near him. Seeing somebody, I forget who, look at a watch, he

got up, and said he was ready, and immediately turning to three Bramins, who were to attend and take care of his body, he embraced them all closely, but without the least mark of melancholy or depression on his part, while they were in agonies of grief and despair. I then looked at my own watch, told him the hour I had mentioned was not arrived, that it wanted above a quarter of eight, but that I should wait his own time, and that I would not rise from my seat without a motion from him. Upon its being recommended to him, that, at the place of execution, he would give some signal when he had done with this world, he said he would speak. We sat about a quarter of an hour longer, during which he addressed himself more than once to me; mentioned Rajah Gourdas, the General, Colonel Monson, and Mr. Francis, but without any seeming anxiety; the rest of the time, I believe he passed in prayer; his lips and tongue moving, and his beads hanging upon his hand. He then looked to me and arose, spoke to some of the servants of the goal, telling them that any thing he might have omitted Rajah Gourdas would take care of, then walked cheerfully to the gate, and seated himself in his  
pallan-

pallankeen, looking round him with perfect unconcern. As the Deputy Sheriff and I followed, we could make no observation upon his deportment till we all arrived at the place of execution. The croud there was very great, but not the least appearance of a riot. The Rajah sat in his pallankeen upon the bearers' shoulders, and looked around at first with some attention. I did not observe the smallest discomposure in his countenance or manner, at sight of the gallows or any of the ceremonies passing about it. He asked for the Bramins, who were not come up, and shewed some earnestness, as if he apprehended the execution might take place before their arrival. I took that opportunity of assuring him, I would wait his own time, "it was early in the day, and there was no hurry." The Bramins soon after appearing, I offered to remove the officers, thinking that he might have something to say in private, but he made a motion not to do it, and said he had only a few words to remind them, of what he had said concerning Rajah Gourdass, and the care of his \* Zenana. He spoke to me, and de-

\* Zenana. Properly the apartments of the women; meaning here, in the sense of a Bramin who does not admit of polygamy, his wife and children.

fired that the men might be taken care of, as they were to take charge of his body, which he desired repeatedly might not be touched by any of the bye-standers; but he seemed not the least alarmed or discomposed at the croud around him. There was some delay in the necessary preparations, and from the awkwardness of the people; but he was no way desirous of protracting the business, but repeatedly told me he was ready. Upon my asking him if he had any more friends he wished to see, he answered he had many, but this was not a place, nor an occasion to look for them. “ Did he apprehend there might be any pre-  
 “ sent, who could not get up for the crowd ?” He mentioned one, whose name was called; but he immediately said, it was of no consequence, “ probably he had not come.” He then desired me to remember him to General Clavering, Colonel Monson, and Mr. Francis, and looked with the greatest composure. When he was not engaged in conversation, he lay back in his pallankeen, moving his lips and tongue as before. I then caused him to be asked about the signal he was to make, which could not be done by speaking, on account of the noise of the croud. He said he would make a motion with his hand; and,  
 when

when it was represented to him that it would be necessary for his hands to be tied, in order to prevent any involuntary motion, and I recommended his making a motion with his feet, he said he would. Nothing now remained, except the last painful ceremony. I ordered his pallankeen to be brought close under the gallows, but he chose to walk, which he did more erect than I have generally seen him. At the foot of the steps, which lead to the stage, he put his hands behind him to be tied with a handkerchief; looking round at the same time, with the utmost unconcern. Some difficulties arising about the cloth, which should be tied over his face, he told the people that it must not be done by one of us. I presented to him a subaltern seapoy officer, who is a Bramin, and came forward with his handkerchief in his hand, but the Rajah pointed to a servant of his own, who was laying prostrate at his feet, and beckoned him to do it. He had some weakness in his feet, which, added to the confinement of his hands, made him mount the steps with difficulty, but he shewed not the least reluctance, scrambling rather forward to get up. He then stood erect on the stage, whilst I examined his countenance as



steadfastly as I could, till the cloth covered it, to see if I could observe the smallest symptom of fear or alarm, but there was not a trace of it. My own spirits sunk, and I stepped into my pallankeen; but before I was well seated, he had given the signal, and the stage was removed. I could observe, when I was a little recovered, that his arms lay back in the same position in which I saw them first tied, nor could I perceive any contortion on that side of his mouth and face which were visible. In a word, his steadiness, composure, and resolution throughout the whole of this melancholy transaction, were equal to any examples of fortitude I have ever read or heard of. The body was taken down, after hanging the usual time, and delivered to the Bramins for burning.

F I N I S.









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